

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Resource Management Company

v.

Civil No. 06-cv-366-JD

Janet Peschong, Personal
Representative for the
Estate of Frank Gregory, Deceased

O R D E R

Before the court for consideration is plaintiff's Motion for Final Default. It may be that plaintiff can ultimately prove that decedent was dishonest and acted fraudulently. However, he misperceives the role of Fed. R. Civ. P. 37. Sanctions, particularly the extreme sanction of default is simply not an alternative to trial or Rule 56. When discovery is requested and it is ordered produced, if the producing party no longer has it to produce and says so under oath, the necessity of resort to a subpoena to third parties to obtain the discovery does not automatically entitle movant to Rule 37 default.

Plaintiff has satisfied me that decedent was either not a competent record keeper or he was not truthful. However, the evidence is simply not sufficient for me to find the latter. Plaintiff is not entitled to Rule 37 sanctions and his motion (Document no. 119) is denied.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: March 4, 2008

cc: Benjamin C. Riggs, Jr., pro se
Peter G. Callaghan, Esq.